

Supreme Court, U.S.
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Supreme Court
of the
United States

October Term, 1977

Case No. 77-1677

GERALD RICHMAN,

Petitioner,

vs.

ROBERT L. SHEVIN,

Attorney General of the State of Florida,

RICHARD E. GERSTEIN,

State Attorney for the Eleventh
Judicial Circuit and the ELECTIONS
COMMISSION of the State of Florida,

Respondents.

RESPONSE OF RESPONDENT
FLORIDA ELECTIONS COMMISSION

STEPHEN MARC SLEPIN, ESQUIRE

Slepin & Slepin
Suite 201 Ellis Building
1311 Executive Center Drive
Tallahassee, Florida 32301
(904) 878-2168

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RESPONSE OF RESPONDENT FLORIDA ELECTIONS COMMISSION

The Florida Elections Commission, Respondent, categorically disagrees with Petitioner's "Statement of the Case," and denies categorically that Florida has "prohibited . . . contributions" by lawyers to a political committee—i.e., the Dade Judicial Trust Fund and/or Dade Judicial Trust Fund committee of the voluntary Dade County Bar Association.

STATEMENT OF CASE AND FACTS

The selectivity indulged by Petitioner in his "Statement of the Case" must herein be redressed.

1. The Attorney General of Florida in 1972 flatly and several times warned the Dade Judicial Trust Fund¹ that:

A. The Dade Judicial Trust Fund is a political committee under Florida law, and

B. It is, as such, subject to the dollar limitations imposed by statute upon political committee contributions to candidates.

That opinion of the Attorney General was incorporated in the 1977 trial court proceedings at ¶13, Stipulation of Facts (p. 48 of Petitioner's appendix herein) and is incorporated herein as Exhibit A-1.

2. In 1976, the Florida Elections Commission received a sworn complaint against the political committee of Dade County lawyers known as the Dade Judicial Trust Fund, investigated same, tried to work with the so-called Dade Judicial Trust Fund political committee, held hearings and entered notice of determination.

3. Gerald Richman—not the five "Trustees" nor the "Judicial Trust Fund Committee" chairman—filed

¹The Dade Judicial Trust Fund, so-called, is a function of the voluntary Dade County Bar Association, and the policies of the escrow arrangement (Trust Fund) are within the plenary discretion of the Dade County Bar Association's Judicial Trust Fund Committee. See appendix to Brief of Attorney General Shevin for the Agreement.

suit in the Circuit Court of and for the Second Judicial Circuit of Florida, suffered entry of the order of May 3, 1977, submitted and had entered the final judgment of May 12, 1977, and appealed to the Supreme Court of Florida.

The Supreme Court of Florida, relying upon this Court's Opinion in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), and upon analysis of Florida Statutes, Chapter 106, validated the Florida law and affirmed the trial court. Rehearing was denied. See, Richman v. Shevin, et al., 354 So.2d 1200 (Fla. 1977), rehearing denied.

Chapter 106, Florida Statutes, 1975, provided in pertinent part:

Section 106.011(1)—“Political Committee” means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate . . . and which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of \$100. . . .

Section 106.011(3)—“Contribution” means (a) A gift, subscription, conveyance, deposit, loan, payment or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election. . . .

Section 106.08(1)—No person or political committee shall make contributions to any candidate or political committee in this state, for any elections, in excess of the following amounts:

(a) To a candidate for countywide office or to a candidate in any election conducted on less than a countywide bases, \$1,000 . . .²

Petitioner at p. 5, in the first paragraph thereof, declares that a judicial trust fund was established to insulate lawyers from direct financial contact with judicial candidates, but neglects to observe and fully to inform this Honorable Court, that at the trial of this cause it was conceded that in 1976, Mr. Richman excluded Supreme Court of Florida races from the Fund in order to assist a friend who was running for state judicial office. (The trial transcript reflects this.) The same critical omission is indulged at numbered paragraph 1 at page 5 of the Petition.

Petitioner materially misleads this Honorable Court, however inadvertently, when at numbered paragraph 3 and footnote numbered 1 (page 5 of Petition), he declares that "no lawyer has given or will be permitted to give that much money [\$1,000] through the Fund" and that no lawyer has at any time contributed more than \$69.54 to any candidate through the Fund. In point of fact, as demonstrated by the official and public records of the State of Florida attached hereto and incorporated herein

²It shall be shown hereinafter that the Dade Judicial Trust Fund, by certain unnamed or anonymous persons, had and exercised the authority to pick and choose which judicial races would be included within or excluded from the operation of the Fund, and that such discretion was exercised at all times pertinent hereto, negating the concept of a fixed and publicly known standard for contributions to candidates.

as Exhibit A-2, substantial sums of money in excess of \$7,000 per candidate have been contributed by the political committee known as the Dade Judicial Trust Fund to individual candidates for judicial office.

At page 6 of the Petition, Petitioner asserts that the amounts of money contributed by the political committee to candidates are determined by a poll of all lawyers admitted to the Bar in Dade County, over four-thousand persons—but neglects to apprise the Court that the record is bereft of evidence of how many of those persons in the critical 1976 elections voted or determined the amounts of money to be contributed to judicial candidates.

At page 7, numbered paragraph 8, Petitioner erroneously declares that no negative reaction to the reports of the Dade Judicial Trust Fund was made by state authorities prior to the investigation conducted by the Florida Elections Commission. This is, unfortunately, an attempt to blink the 1972 Opinion of the Attorney General of Florida flatly prohibiting the Dade County lawyers' political committee from violating Florida election laws by making contributions in excess of statutorily specified amounts.

Petitioner, again, at footnote number 5 (page 8 of Petition), declares that Gerald Richman was entitled to contribute \$5.21 plus \$994.79 to a judicial candidate, and blinks the fact that Gerald Richman did not contribute \$5.21—but that the \$5.21 represents a factored figure calculated retrospectively by the lawyers' political committee, after it had received Gerald Richman's dollars and had figured out how much it wished to attribute, retrospectively, to each contributor for each candidate found "qualified."

At page 9, the Petitioner misstates the facts by declaring that the operation of the Fund "was first called into question by the Florida Elections Commission." That is, factually, false. The operation of the Fund was first called into question and seriously challenged by the Attorney General of Florida in 1972, whereafter the distinguished citizens of Dade County who comprise and have comprised the Dade Judicial Trust Fund systematically ignored the Florida Statutes as well as the warnings of the Attorney General.

At page 11 of the Petition, Petitioner alleges that there was "a limited amount of testimony" elicited before the trial court, but omits to bring to the attention of this Court that the option was with the Petitioner and that he alone testified.

I.

A PROHIBITION OF CONTRIBUTIONS THROUGH THE JUDICIAL TRUST FUND ESCROW ARRANGEMENT VIOLATES THE PETITIONER'S FIRST AMENDMENT RIGHTS OF FREE SPEECH.

Florida law never has prohibited—and does not now prohibit—"contributions through the judicial trust fund escrow arrangement" [i.e., political committee].

Petitioner's first point is not merely "loaded" in the classic sense, but is an exercise in paraleipsis.

Section 106.011(2), Florida Statutes, 1975, defined a "political committee" as two or more persons combined—primarily or incidentally—to support or oppose any candidate and accepting contributions or making expenditures in a calendar year of \$500 or more.

Anyone—lawyer, doctor or Indian chief—was free, is free, to contribute to (a) candidates or (b) political committees.

To be sure, §106.08(3), Florida Statutes, 1975, flatly prohibited any person from giving in the name of another—lest the whole purpose of "Who Gave It, Who Got It" be foiled.

But Gerald Richman's Dade Lawyers' committee was at all times pertinent entitled to contribute to judicial candidates up to the statutory limits set out at §106.08(1), Florida Statutes, 1975.

There is no need to quote this Court's Opinion in Buckley v. Valeo, 424 U.S. 1 (1976)—statutory limitations upon the amounts which may be contributed to candidates, by individuals or by political committees, are not unconstitutional.

One cannot fault this Dade County political committee of lawyers for wanting "political clout" over and above doctors' committees, labor committees, etc. Indeed they urged Florida's Supreme Court to deem lawyers to be unique and uniquely privileged to escape Florida's comprehensive election law regimen.

Additionally, it won't do to argue what Petitioner or some of his associates will do to limit monies into or out of their political committee—the record cannot be blinked nor overcome by Mr. Richman's prognosticatory assertions.

Where single-source contributions to candidates (by one individual, one corporation, one political committee) are limited by a dollar amount, the State of Florida has expressed a compelling interest, and it need not thereby have purported to have solved all problems of election corruption or perversion.

Yet even in the case sub judice the clear testimony was that Petitioner spoke with a Florida Supreme Court candidate who didn't want his contributions subjected to the "trust agreement" and, therefore, Florida Supreme Court races were peremptorily excluded from the Dade political committee's beneficence. Hardly a reflection of the program's granite integrity or its unsusceptibility to abuse on behalf of selected candidates.

Of course, Florida has a compelling interest in the regulation of single-source "contributions" to candidates, even as individuals may make unlimited "expenditures" on behalf of candidates per §106.071, Florida Statutes, 1977, and Buckley v. Valeo, op. cit.

II.

PROHIBITION OF CONTRIBUTIONS THROUGH THE JUDICIAL TRUST FUND ESCROW ARRANGEMENT VIOLATES THE PETITIONER'S FIRST AMENDMENT RIGHT OF FREE ASSOCIATION.

There is not a sentence in Chapter 106, Florida Statutes, nor in our Supreme Court's Opinion in Richman v. Shevin, et al., 354 So.2d 1200 (Fla. 1977), reh. den., which "prohibits individuals from joining with others to escrow money to support judicial candidates . . ." as alleged at p. 19, PETITION FOR WRIT OF CERTIORARI.

Lawyers in Dade County—like labor's COPE, like businessmen's ASSOCIATED INDUSTRIES OF FLORIDA, like doctors' FLA-PAC, etc.—may associate in any political committees of their choice. They always could.

It cannot be, surely, the suggestion of Petitioner that Kusper v. Pontikes, 414 U.S. 51 (1973), must be read to conflict with Buckley v. Valeo, 424 U.S. 1 (1976)—with the resolution being that 2 or 20 Dade lawyers can associate qua political committee and be thereby entitled to contribute \$3,000 or \$9,000 or \$30,000 to selected candidates.

Yet, this is the thesis excogitated by Petitioner under this head.

No limitation whatsoever has been imposed upon these lawyers' "right of association."

III.

THE FLORIDA STATUTE IS OVERBROAD.

Petitioner concedes, at p. 24, the constitutionality of state limitation of dollar volume of contributions by single-sources.

Yet, he alleges, Chapter 106, Florida Statutes, is overbroad because he and his committee colleagues do not intend to be corrupt, nor to corrupt selected candidates, nor to allow terribly large contributions (into or out of his committee?).

This won't do.

Petitioner's group is plainly a political committee, and no matter their good intentions or promise of making benign internal procedures, the State of Florida has the right to say to this lawyers' committee or to COPE, etc., single-source contributions by you to judicial candidates (and legislative candidates, inter alia) are limitable and are limited.

There is no overbreadth in such an explicit, focused statutory principle.

CONCLUSION

Chapter 106, Florida Statutes, reflects this Court's decision in Buckley v. Valeo, op. cit., and the Petition should be denied.

/s/ STEPHEN MARC SLEPIN

Stephen Marc Slepin, Esquire

SLEPIN & SLEPIN
Suite 201 Ellis Building
1311 Executive Center Drive
Tallahassee, Florida 32301
(904) 878-2168

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by United States Mail this 20th day of June, 1978, to:

Honorable Robert Shevin
Attorney General
The Capitol
Tallahassee, Florida 32304

Mr. James Whisenand
Deputy Attorney General
The Capitol
Tallahassee, Florida 32304

Talbot D'Alemberte, Esq.
Steel, Hector & Davis
1400 Southeast First
National Bank Building
Miami, Florida 33131

/s/
Stephen Marc Slepin, Esquire

SLEPIN & SLEPIN
Suite 201 Ellis Building
1311 Executive Center Drive
Tallahassee, Florida 32301
(904) 878-2168



STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32304

September 8, 1972

Honorable Raymond G. Nathan
1110 Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130

Dear Judge:

You have called me and indicated that the Dade County Bar Association has collected funds from various lawyers in Dade County which will constitute a "trust fund" to be contributed to the judicial candidates in the county who have received a rating of "qualified" from the members of the Bar in the county. It is desired to distribute these trust funds equally among such candidates. You have requested my view as to whether the Bar Association may contribute \$1,400 to each of such candidates; and, if so, must the candidate list the name of each lawyer who contributed to the trust fund.

Subsection (9)(a) of Section 99.161, relates to contributions by political party committees and by an "organization, group, or other committee organized in support of a candidate" and requires such organizations or groups to "make a full and complete report of all moneys or other things of value contributed to them or to any member of such body, and such report shall contain the names and mailing addresses of each of the contributors and the

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amount contributed by each" as well as a statement of the expenditures made by the group to the date of the report. This has been discussed with Dorothy Glisson and she agreed that the group of lawyers who have made contributions to the Bar Association Trust Fund in behalf of qualified judicial candidates would probably be within the purview of this statute. Mrs. Glisson still has some doubt but agreed that since the money has already been collected in the name of the Dade County Bar Association Trust Fund, it would be all right to go ahead and make the contributions to the various candidates in the name of the Dade County Bar Association Trust Fund.

The "full and complete report" referred to above, containing the names and addresses of the contributors and amounts contributed by each to the group, apparently suffices for "disclosure" purposes; and I find nothing in the statute to require the group to disclose this information to the candidate when making the contribution as a "group." Mrs. Glisson agreed that even though the statute requires that the reports of groups whose members reside only within the county must be made to the circuit court clerk, it would help her records to have a copy of such reports. They are required to be filed monthly, at this point (after the qualifying deadline has passed) until the month following the general election, and must include expenditures as well as contributions.

Subsection (d) of Section 99.161(9) authorizes a political party executive committee to contribute to another executive committee or to "individual candidates of that party

EXHIBIT A-1

EXHIBIT A-1

Honorable Raymond G. Nathan
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in general elections" more than \$1,000; and this express provision should probably be interpreted, under the "inclusio unius est exclusio alterius" rule, as prohibiting contributions of more than \$1,000 to an individual candidate by any other group or organization. No opinion of this office nor of the courts has been found on this point.

The only other alternative that I could conceive is that each lawyer could contribute directly to each judicial candidate whatever his portion of the \$1,400 individual contribution would be. In other words, if one hundred lawyers are participating in the trust fund, each lawyer would contribute \$14 to each judicial candidate. The fact that the amount actually contributed by him to the candidate was based upon an agreement among various lawyers to contribute an equal amount should be of no concern to the Division of Elections or to the voters, for whose benefit the "full disclosure" requirements of the Election Code were apparently enacted. Mrs. Glisson was in agreement that this method would comply fully with the Code.

In conclusion, the Dade County Bar Association Trust Fund could contribute \$1,000 to each judicial candidate. The Trust Fund in this situation would be a "group" or "organization" within the purview of Subsection (9) of Section 99.161, Florida Statutes, and the campaign treasurer of each candidate would list the Trust Fund as the contributor, without listing each separate lawyer as a contributor. As noted above, such organizations are required to "make a full and complete report" of all con-

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tributions received from members of the organization, including their names and addresses and the amounts contributed by each. In addition, the Trust Fund must file the reports required by this section. While the reports are required by the statute to be filed only with the circuit court clerk, if all members of the group or organization reside within the county, it is suggested that copies thereof be filed also with the Department of State, as the offices in question are required to qualify with that department.

If it is desired to contribute more than \$1,000 to each candidate, each attorney participating in the Trust Fund should make an individual personal contribution to each judicial candidate of whatever amount his portion of the \$1,400 would be when divided up among the participating attorneys. In this situation, each contributing attorney would be listed by the campaign treasurer as a contributor, with the amount of his contribution.

Sincerely,

/s/

ROBERT L. SHEVIN
Attorney General

RLS/Ws

bc: Dade County Bar Association Headquarters

CAMPAIGN TREASURER'S REPORT

EXPENDITURES

Name Dade Judicial Trust Fund _____
(if candidate or committee)

Address 111 N. W. First Ave., #214, Miami, Fla.

Candidate For _____

Expenditures Previously Reported \$ _____

Expenditures This Report \$ _____

Total Expenditures To Date Of This Report . . . \$ _____

LIST ALL EXPENDITURES, AUTHORIZED, INCURRED OR MADE DURING THIS PERIOD

Campaign Treasurer Initial Hire

Candidates or Chairman Initial Here

CAMPAIGN TREASURER'S REPORT

EXPENDITURES

Name DADE JUDICIAL TRUST FUND
(Candidate or Committee)

Address C/O 111 N. W. First Avenue, #214, Miami, Fla. 33132

Candidate For

Expenditures Previously Reported \$ **39,701.45**

Expenditures This Report..... \$ **1,500.00**

Total Expenditures To Date Of This Report.....\$ 41,201.45

LIST ALL EXPENDITURES, AUTHORIZED, INCURRED OR MADE DURING THIS PERIOD

Campaign Treasurer Initial Here

Candidate or Chairman Initial Here

CAMPAIGN TREASURER'S REPORT

EXPENDITURES

Name DADE JUDICIAL TRUST FUND
(Candidate or Committee)
Address 111 N W First Avenue #214, Miami, Fla. 33128
Candidate For _____

Expenditures Previously Reported \$ none
Expenditures This Report \$ 37,631.00
Total Expenditures To Date Of This Report \$ 37,631.00

LIST ALL EXPENDITURES, AUTHORIZED, INCURRED OR MADE DURING THIS PERIOD

Date	Full name, residence and mailing address, if any, occupation and principal place of business.	Purpose of Expenditure	Amount
8-18-76	DADE COUNTY BAR ASSOCIATION 111 N. W. 1 Ave., Miami, Fla.	Reimburse postage, printing for three solicitations	\$ 3,397.88
8-18-76	REVIEW PRINTING COMPANY P.O. Box 589, Miami, Fla. 33101	Printing envelopes pledge cards, trust agreements	\$ 434.02
8-18-76	Miami Review & Daily Record P.O. Box 589, Miami, Fla. 33101	Publication of judicial candidates biographies	\$ 400.00
8-30-76	Frederick N. Barad, 1121 Cran- don Blvd., Miami, Fla. Judge Miami, Fla.	Qualifying fee for 11th Circuit County Court election	\$ 1,700.00
8-30-76	Herbert M. Klein, 6003 Turin St., Miami, Fla., Judge, Miami Florida	Qualifying fee for 11th Circuit Court election	\$ 1,800.00
8-30-76	Edward H. Swanko, 2718 Alhambra Circle, Coral Gables, Fla. Judge, Miami, Fla.	Qualifying fee for 11th Circuit County Court election	\$ 1,700.00
8-30-76	John H. Smith, 1351 N. W. 12 St., Miami, Fla. Judge	Qualifying fee for 11th Circuit County Court election	\$ 1,700.00
8-30-76	Harvey L. Goldstein, 1485 N. W. 19 Terr., Miami, Fla., Lawyer Miami, Fla.	Campaign funds for 11th Circuit County Court election	\$ 7,950.00
8-27-76	Robert M. Deehl, 1351 N. W. 12 St., Miami, Judge, Miami, Fla.	Qualifying fee for 11th Circuit County Court election	\$ 1,700.00
8-27-76	Marshall H. Ader, 2800 Brickell Ave., Miami, Lawyer, Miami, Fla.	Campaign funds for 11th Circuit County Court election	\$ 7,950.00

Campaign Treasurer Initial Here _____

Candidate or Chairman Initial Here _____

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CAMPAIGN TREASURER'S REPORT

EXPENDITURES

Name DADE JUDICIAL TRUST FUND
(Candidate or Committee)
Address 111 N. W. First Avenue
Candidate For _____

Expenditures Previously Reported..... \$ 19,700.00
Expenditures This Report..... \$ 10,000.00
Total Expenditures To Date Of This Report..... \$ 29,700.00

LIST ALL EXPENDITURES, AUTHORIZED, INCURRED OR MADE DURING THIS PERIOD

Campaign Treasurer Initial Here

Candidate or Chairman Initial Here

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DADE JUDICIAL TRUST FUND

EXPENDITURES

September 3, 1974 through September 9, 1974

All distributions made to candidates for Judicial office in
the 11th Judicial Circuit of Florida (Dade County). All
distribution made Septe

9-6-74	Raymond G. Nathan, District Court of Appeal Justice Building, Miami, Florida	1,900.00
9-5-74	H. Paul Baker, Circuit Judge, Justice Building, Miami, Florida	1,800.00
9-5-74	James H. Earnest, Circuit Judge, Dade County Courthouse, Miami, Florida.	1,800.00
9-5-74	Boyce F. Ezell, Jr., Circuit Judge, Dade County Courthouse, Miami, Florida	1,800.00
9-5-74	Richard Fuller, Circuit Judge, Dade County County Courthouse, Miami, Florida	1,800.00
9-5-74	Seymour Gelber, Circuit Judge, 800 N. W. 28 Street, Miami, Florida	1,800.00
9-5-74	Edward S. Klein, Circuit Judge, Dade County Courthouse, Miami, Florida	1,800.00
9-5-74	John Red Lake, Circuit Judge, Dade County Courthouse, Miami, Florida	1,800.00
9-6-74	Alfonso C. Sepe, Circuit Judge, Justice Building, Miami, Florida	1,800.00
9-6-74	Calvin Mapp, County Court Judge, Justice Building, Miami, Florida	1,700.00
9-5-74	Henry L. Oppenborn, County Court Judge, Justice Building, Miami, Florida	1,700.00